IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.50047 of 2006

NEELAM AGRAWAL, Indian Promoter and Director of Blue Heavens Agro Industries Ltd. Company having its office at 93/A, R.K.Avenue, Rajendra Nagar, P.S. Kadam Kuan, District Patna---------- Petitioner

Versus

1.THE UNION OF INDIA through the Regional Director Department of Company affairs, Kolkata

2.Registrar of Companies, Bihar and Jharkhand, Maurya Lok Complex IVth floor, Block-A, Patna- 800 001---------- OPp. Party.

For the petitioner : M/S Sujeet Kumar Sinha,Mukesh Kr.Sinha
For the opp. Party Union of India: Mr. Binod Kumar, ACGSC.

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21. 23/10/2008 Heard learned counsel for the petitioner Neelam Agrawal and the learned counsel for the Union of India through Registrar of Companies, Bihar and Jharkhand.

The petitioner has challenged the order dated 18.11.2002 passed by Special Judge, Economic Offence, in Complaint case no. 262© of 2002 and the entire criminal proceeding against the petitioner by which learned Special Judge has taken cognizance of the offences under Sections 63, 68 and 628 of the Companies Act.

The prosecution has been instituted at the instance of the Registrar of Companies and it is alleged that a company was incorporated under the name of M/s Blue Heavens Agro Industries Limited on 26.5.1994 with the Registrar of the Companies, Patna. It is further alleged that the said company was being set up with collaboration of German experts. It is alleged that in view of the

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audit balancesheet filed by the company in 2000-2001, it was found that the company has failed to keep up the promises as made in the prospectus.

The company, namely, M/s Blue Heavens Agro Industries Ltd. was initially registered on 26.5.1994 under the name of "Blue Heavens Flowers and Tissue Culture Limited" as a public Limited company. The object of the company was to establish and carry on the business, inter alia, as manufacturers, growers, processors, dealers, importers and exporters of all types of flowers, mushrooms, agricultural products and tissue culture of all kinds and their by products amongst other things.

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For the purpose of deciding the matter regarding continuance of the proceeding against the petitioner, being one of the Directors of the Company, it would be relevant to mention that in the quashing application, several facts have been referred by the learned counsel for the petitioner and denied by the learned counsel for the other side by filing supplementary and counter affidavits. But it would be relevant to mention that the petitioner, who was one of the Directors of the Company, is said to be a house

wife and non-active Director of the Company. The fact is that on 27.3.1995 the Board of Directors of the Company authorized Dr. Ajay Kumar Ram to carry out day to day affairs of the company in absence of appointment of Managing Director. The Board passed the resolution that in absence of appointment of Managing Director of the Company "Blue Heavens Agro Industries Limited" Dr.A.K.Ram is hereby authorized to carry out and manage the day to day affairs and to negotiate, arrange, and execute agreements and other legal documents and formalities with financial institution, Banks, Government of India, Foreign collaborators, consultants, Merchant Bankers, supplier of plant and Machinery, Technical know-how, builders, contractors and experts and to engage and appoint any person, institution and bodies for the project and purpose of the company. His Acts and statements shall be binding on the Company. It has further been averred that Resolution dated 14.2.1998 by which Ajay Kumar Ram was appointed as President of the Company and so he was required to carry out day to day management of the Company.

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From the aforesaid facts it would be revealed that the petitioner is/was not an active Director of the Company rather a non functional Director, and, so, she cannot be held responsible to see day to day affairs of the Company. Reliance has been placed in the case of SMS Pharmaceutical Ltd. Vs. Neeta Bhalla, 2005 S.C.

Learned counsel by referring several paragraphs of the petition has attempted to justify that due to some non-participation of the foreign collaborators and thereby withholding of necessary equipments and plants by foreign collaborators, the plan of the Company could not be executed.

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Reliance has been placed also on a decision of this Court dated 4.1.2007 passed in Cr.Misc.No. 39653 of 2004 by Hon'ble Mrs. Justice Seema Ali Khan in which on the similarly placed situation one of the non-executive Directors of the Company Dr.Shishupal Ram and another practicing Advocate of Ranchi have been exonerated and case of this petitioner being a house wife stands on better footing than that of aforesaid case. The order of the said reliance appears to be well discussed, which is also based on another order of this

Court passed by Hon'ble Mr.Justice Navaniti Pd. Singh in Cr.Misc.No. 38582 of 2005 dated 16.5.2006, who has quashed order of cognizance dated 25.6.2003 against one of the Directors Sri T.K.Sinha.

For the purpose of continuance of the proceeding against the petitioner, suffice would be to say that she happens to be non-functional Director having no role to play in the transaction of the Company and for that there is resolution and it has been stated that one of the Directors should be held responsible. So, keeping her case on parity of Dr. Shishupal Ram and T.K.Sinha, other Directors, proceeding against whom has been quashed in other cases more or less for the same cause of action, launched by the same agency of the Govt. more or less on the same facts, the very continuance of the proceeding against the petitioner would not serve any useful purpose and, so, the same stands quashed. The impugned order is set aside.

In the result, this application is allowed.

(Subash Chandra Jha,J.)

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